OLR RESEARCH REPORT

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À LA CARTE CABLE TV OPTIONS

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You asked why cable subscribers generally cannot choose TV channels on an à la carte basis, e.g., choosing whether or not to subscribe to a particular sports network without also subscribing to other channels in a service tier or vice versa. Much of the information in this report is taken from a Federal Communications Commission (FCC) website, http://www.fcc.gov/guides/choosing-cable-channels and a report by the Congressional Research Service.

SUMMARY

The state does not have jurisdiction in this area. The FCC, which does have jurisdiction, has declined to require cable companies to offer their services on an à la carte basis. It has conducted two investigations of this option, producing conflicting findings as to whether this approach would save or cost subscribers money.

In practice, a cable TV company can select the channels and services that are available on its system. With the exception of channels that federal law requires to be carried on the basic tier, the cable company has broad discretion in choosing which channels will be available and how they are packaged and marketed to subscribers. The cable company

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negotiates the terms and conditions for carrying channels and other services on the cable system with their providers. Terms may include whether the channel or service will be offered in a package with other programming or on à la carte or pay-per-view basis. Some cable companies provide some channels on these basis or as part of "themed" tiers.

STATE JURISDICTION

Federal law (47 U.S.C. § 521 *et seq.*) significantly restricts the extent to which franchising authorities can regulate cable TV companies. In Connecticut, the franchising authority is the Public Utilities Regulatory Authority, formerly the Department of Public Utility Control.

Among other things, franchising authorities cannot require that cable companies offer channels on an à la carte basis or require that specific channels be carried as part of the company's basic service tier. Franchising authorities can enforce agreements in franchises regarding "broad categories" of programming such as sports channels. However, a 2007 state law (PA 07-253), limited the scope of state regulation by effectively ending franchising of cable companies. OLR report 2010-R-0290 describes this law.

FEDERAL LAW

Under federal law, cable companies generally must offer a basic service tier that includes the local broadcast TV channels and the public, educational, and governmental access channels that the company is required to offer under its franchise agreement. The cable company may offer additional channels as part of this tier.

A cable company may not require a subscriber to purchase anything except the basic tier in order to have access to channels offered on an à la carte basis or pay-per-view programming. For example, if a cable company offers both a basic and expanded basic tier, a subscriber cannot be required to purchase the expanded basic tier in order to access pay-per-view programs. In addition, a cable company may not discriminate between consumers who subscribe to only the basic tier and other subscribers with regard to the rates charged on a per-channel or per-event basis. A cable company may request a waiver of these prohibitions from the FCC. but beyond these requirements, cable companies are free to determine how they offer channels. In practice, they generally group channels together in tiers.

FCC REPORTS

2004 Report

In May 2004, leaders of the House and Senate Commerce Committees asked the FCC to collect information and analyze à la carte pricing of cable networks. The FCC did not undertake an empirical study of its own; rather, it modified some of the assumptions and parameter values of an earlier study performed by the consulting firm Booz Allen and reported how those changes affected the results.

The major conclusions of this initial FCC report were:

1. an à la carte requirement likely would increase operational expenses for cable and satellite TV companies in three main areas (a) equipment and infrastructure; (b) customer service operations; and (c) billing and back office support;

2. unless constrained by regulation, many of these increased costs would likely be passed on to subscribers, resulting in higher subscriber fees;

3. under an à la carte mandate, networks formerly sold in tiers would need to significantly increase their marketing expenses to induce consumers to choose the network;

4. any type of à la carte requirement would significantly reduce a network's advertising revenues and license fee structure, which could cause many networks to fail and reduce the diversity of programming; and

5. if cable companies were required to offer networks on an à la carte basis, households that purchase fewer than 9 advertiser-supported networks might see a reduced monthly cable bill while those that purchased more networks would likely face an increase in their bills (at that time, the average subscriber watched 11 advertiser-supported cable networks plus the six broadcast channels).

The report recommended that, rather than requiring the à la carte provision of service, public policy should focus on creating incentives for more competitors in the marketplace and for fostering technologies such as digital video recorders that give the public more control over their video choices. The report was not backed by a majority of the FCC commissioners, and as a result the FCC took no action.

2006 Report

On February 9, 2006, then FCC chairman Kevin Martin released a second report, which challenged many of the assumptions underlying the initial report. The second report re-ran the original model, using parameters reflecting different underlying assumptions and correcting for an alleged methodological error in the initial report.

With these changes, the second report found that:

1. under à la carte pricing, the 40% of cable households that received digital service and 100% of satellite households that had could receive as many as 14 advertiser-supported cable networks plus the six broadcast stations without seeing an increase in their monthly bills, an increase over the average of 17 channels that the average household watched in a week at that time;

2. the initial Booz Allen model was mistaken in (a) assuming that the amount of time households spent viewing TV would decrease under à la carte and (b) concluding that this would decrease advertising revenues and increase licensing fees by the networks;

3. à la carte and increased use of themed tiers could give consumers the opportunity to lower their cable bills by purchasing fewer channels or smaller packages;

4. à la carte pricing could make it easier for some new networks to enter the market because advertisers and cable distributors might find it easier to judge the value of smaller networks if consumers could express their interests through subscriptions; and

5. à la carte pricing might provide programming that households value more than tiered programming because it might result in more programming that is highly valued by a niche audience or more general interest programming that is widely valued.

Again, the report did not garner the support of a majority of the FCC commissioners and the FCC took no action on the report and has taken no substantive action since.

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